



## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

#### **50 CFR Part 17**

**[Docket No. FWS–R4–ES–2012–0103]**

**[4500030114]**

**RIN 1018–AY71**

### **Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Northwest Atlantic Ocean Distinct Population Segment of the Loggerhead Sea Turtle (*Caretta caretta*)**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of comment period; announcement of public hearing; and availability of draft economic analysis.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service or USFWS), announce the reopening of the comment period on the March 25, 2013, proposed rule to designate specific areas in the terrestrial environment as critical habitat for the Northwest Atlantic Ocean Distinct Population Segment (DPS) of the Loggerhead Sea Turtle (*Caretta caretta*) under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of a draft economic analysis (DEA) of the proposed designation of critical habitat and an amended required determinations section of the proposal. We also announce that, based on a reevaluation of the applicable Habitat Conservation Plan, we are removing Unit LOGG-T-FL-04 from consideration for exclusion from critical habitat. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule, the associated DEA, and the amended required determinations section. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

**DATES:** The comment period for the proposed rule published March 25, 2013, at 78 FR 18000, is reopened. We will consider comments received or postmarked by **[INSERT DATE 60 DAYS AFTER DATE OF FEDERAL REGISTER PUBLICATION]**.

Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be considered in the final decision on this action.

*Public informational sessions and public hearings:* We will hold three public informational sessions and public hearings on this proposed rule. We will hold a public informational session from 5:30 p.m. to 6:30 p.m., followed by a public hearing from 7 p.m. to 9 p.m., in Charleston, South Carolina on Tuesday, August 6 (see **ADDRESSES**). We will hold a public informational session from 5:30 p.m. to 6:30 p.m., followed by a public hearing from 7 p.m. to 9 p.m., in Wilmington, North Carolina on Wednesday, August 7 (see **ADDRESSES**). We will hold a public informational session from 5:30 p.m. to 6:30 p.m., followed by a public hearing from 7 p.m. to 9 p.m., in Morehead City, North Carolina on Thursday, August 8 (see **ADDRESSES**). Registration to present oral comments on the proposed rule at the public hearings will begin at the start of each informational session.

**ADDRESSES:** You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal:

<http://www.regulations.gov>. Search for FWS–R4–ES–2012–0103, which is the docket number for this rulemaking.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R4–ES–2012–0103; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will

post any personal information you provide us (see the **Public Comments** section below for more information).

*Document Availability:* You may obtain copies of the proposed rule and draft economic analysis on the internet at <http://www.regulations.gov> at Docket No. FWS–R4–ES–2012–0103 or at <http://www.fws.gov/northflorida>, or by mail from the North Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

*Public informational sessions and public hearings:* The August 6, 2013, public informational session and hearing will be held at the South Carolina Department of Natural Resources, Marine Resources Research Institute Auditorium, 217 Ft. Johnson Road, Charleston, SC 29412. The August 7, 2013, public informational session and hearing will be held at the University of North Carolina – Wilmington, Warwick Center, Ballroom 5, 629 Hamilton Drive, Wilmington, NC 28403. The August 8, 2013, public informational session and hearing will be held at the Crystal Coast Civic Center, 3505 Arendell Street, Morehead City, NC 28557. People needing reasonable accommodations in order to attend and participate should contact Chuck Underwood, External Affairs Specialist, North Florida Ecological Services Office, as soon as possible (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:** Dawn P. Jennings, Acting Field Supervisor, U.S. Fish and Wildlife Service, North Florida Ecological Services Office, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256; by telephone 904–731–

3336; or by facsimile 904–731–3045. People needing reasonable accommodations in order to attend and participate in the public informational sessions and hearings should contact Chuck Underwood, External Affairs Specialist, North Florida Ecological Services Office; by telephone 904–731–3336; or by email [chuck\\_underwood@fws.gov](mailto:chuck_underwood@fws.gov). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

## **SUPPLEMENTARY INFORMATION:**

### **Public Comments**

We will accept written comments and information during this reopened comment period on our proposed designation of critical habitat in the terrestrial environment for the Northwest Atlantic Distinct Population Segment (DPS) of the loggerhead sea turtle that we published in the **Federal Register** on March 25, 2013 (78 FR 18000), our DEA of the proposed designation, and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as “critical habitat” under section 4 of the Act, including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the

designation of critical habitat may not be prudent.

(2) Specific information on:

(a) The distribution of the loggerhead sea turtle;

(b) The amount and distribution of loggerhead sea turtle habitat; and

(c) Which areas, occupied by the species at the time of listing (or currently occupied), that contain features essential for the conservation of the species we should include in the designation and why,

(d) What areas not occupied at the time of listing are essential to the conservation of the species and why.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Whether any of the exemptions we are considering, under section 4(a)(3)(B) of the Act, of land on Department of Defense property at Marine Corps Base Camp Lejeune (Onslow Beach), Cape Canaveral Air Force Station, Patrick Air Force Base, and Eglin Air Force Base (Cape San Blas) are or are not appropriate, and why.

(5) Any foreseeable economic, national security, or other relevant impacts that may result from designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas from the proposed designation that are subject to these impacts.

(6) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

(7) Information on the extent to which the description of economic impacts in the DEA is complete and accurate.

(8) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the DEA, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

(9) Special management considerations or protection that may be needed for the nesting beach habitat in critical habitat areas we are proposing, including managing for the potential effects of climate change.

(10) Information on the projected and reasonably likely impacts of climate change on the loggerhead sea turtle and proposed terrestrial critical habitat.

(11) Whether any of the areas we are considering for exclusion under section 4(b)(2) of the Act in St. Johns, Volusia, and Indian River Counties, Florida, because they are covered by an HCP that incorporates measures that provide a benefit for the

conservation of the loggerhead sea turtle, are or are not appropriate, and why. The St. Johns County, Florida, Habitat Conservation Plan (“A Plan for the Protection of Sea Turtles and Anastasia Island Beach Mice on the Beaches of St. Johns County, Florida”) is available at <http://www.co.st-johns.fl.us/HCP/HabitatConservation.aspx>, the Volusia County, Florida, Habitat Conservation Plan (“A Plan for the Protection of Sea Turtles on the Beaches of Volusia County, Florida”) is available at <http://www.volusia.org/core/fileparse.php/4145/urlt/VolusiaHCPDec2007small2.pdf>, and the Indian River County, Florida, Habitat Conservation Plan (“Habitat Conservation Plan for the Protection of Sea Turtles on the Eroding Beaches of Indian River County, Florida”) is available at <http://www.ecological-associates.com/IRC-Final-HCP-July-2003.pdf>.

(12) Whether any other specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

If you submitted comments or information on the proposed rule (78 FR 18000) during the initial comment period from March 25, 2013, to May 24, 2013, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determination. Our final determination concerning critical habitat will take into consideration all written comments and any additional information we receive during both comment periods. On



the basis of public comments, we may, during the development of our final determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning the proposed rule or DEA by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information—will be posted on the website. We will post all hardcopy comments on <http://www.regulations.gov> as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule and the DEA, will be available for public inspection at <http://www.regulations.gov> at Docket No. FWS–R4–ES–2012–0103, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, North Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule and the DEA on the Internet at <http://www.regulations.gov> at Docket No. FWS–R4–ES–2012–0103, or by mail from

the North Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

## **Background**

For more information on the Northwest Atlantic Ocean DPS of the loggerhead sea turtle, its habitat, or previous Federal actions, refer to the proposed designation of critical habitat published in the **Federal Register** on March 25, 2013 (78 FR 18000), which is available online at <http://www.regulations.gov> (at Docket No. FWS–R4–ES–2012–0103) or the final listing rule published in the **Federal Register** on September 22, 2011 (76 FR 58868), which is available online at <http://www.regulations.gov> (at Docket Number 100104003-1068-02). Both documents are available from the North Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

## *Previous Federal Actions*

The proposed rule to designate areas in the terrestrial environment as critical habitat for the Northwest Atlantic Ocean DPS of the loggerhead sea turtle was published in the **Federal Register** on March 25, 2013 (78 FR 18000), with a 60-day comment period ending May 24, 2013.

On May 10, 2013, the U.S. District Court of the Northern District of California approved a settlement agreement between USFWS and NMFS and the Center for

Biological Diversity that stipulates: (1) On or before July 1, 2013, NMFS will complete a determination concerning the designation of marine critical habitat for the Northwest Atlantic Ocean DPS of the loggerhead sea turtle and submit it to the **Federal Register** for publication; (2) on or before July 1, 2014, USFWS will complete a final determination concerning the designation of terrestrial critical habitat for the Northwest Atlantic Ocean DPS of the loggerhead sea turtle and submit it to the **Federal Register** for publication; and (3) on or before July 1, 2014, NMFS will complete a final determination concerning the designation of marine critical habitat for the Northwest Atlantic Ocean DPS of the loggerhead sea turtle and submit it to the **Federal Register** for publication.

#### *Critical Habitat*

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the March 25, 2013, proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of the designated critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing

actions affecting critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

### **Consideration of Impacts under Section 4(b)(2) of the Act**

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of mapping areas containing essential features that aid in the recovery of the listed species, and any benefits that may result from designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation,

strengthening, or encouragement of partnerships; or implementation of a management plan. In the case of the Northwest Atlantic Ocean DPS of the loggerhead sea turtle, the benefits of critical habitat include public awareness of the presence of the species and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for the species due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for permits issued by or for projects undertaken by Federal agencies.

As discussed in the proposed rule, we are considering whether to exclude areas in St. Johns, Volusia, and Indian River counties, Florida, that are covered under habitat conservation plans (HCP), because the HCPs incorporate measures that provide a benefit for the conservation of the loggerhead sea turtle. In the proposed rule, areas being considered for exclusion include areas within Units LOGG-T-FL-01, LOGG-T-FL-02, and LOGG-T-FL-03 that are covered under the St. Johns County HCP; areas within Units LOGG-T-FL-04 and LOGG-T-FL-05 that are covered under the Volusia County HCP; and areas within Unit LOGG-T-FL-10 that are covered under the Indian River County HCP. Subsequent evaluation of the Volusia County HCP indicates that, although Unit LOGG-T-FL-04 is within the HCP's defined area, the only portion of this critical habitat unit that occurs in Volusia County is the North Peninsula State Park, over which Volusia County has no jurisdiction. The HCP covers only incidental take associated with County emergency vehicles accessing the North Peninsula State Park beaches and does not contain any specific conservation measures for the loggerhead sea turtle within the park. Therefore, we announce that we are no longer considering Unit LOGG-T-FL-04 for

exclusion from critical habitat designation under section 4(b)(2) of the Act. We also have received comments on the proposed rule requesting that we exclude other areas based on economic or other concerns. We will evaluate these additional exclusion requests during our development of a final designation.

### *Draft Economic Analysis*

The final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment periods and information about the economic impact of designation. Accordingly, we have prepared a DEA concerning the proposed critical habitat designation, which is available for review and comment at <http://www.regulations.gov> at Docket No. FWS–R4–ES–2012–0103 (see **ADDRESSES** section). The DEA analyzes economic impacts from the proposed critical habitat designation, published in the **Federal Register** March 25, 2013 (78 FR 18000).

The purpose of the DEA is to identify and analyze the potential economic impacts associated with the proposed terrestrial critical habitat designation for the Northwest Atlantic Ocean DPS of the loggerhead sea turtle. The DEA separates conservation measures into two distinct categories according to “without critical habitat” and “with critical habitat” scenarios. The “without critical habitat” scenario represents the baseline for the analysis, considering protections otherwise afforded to the loggerhead (e.g., under

the Federal listing and other Federal, State, and local regulations). The “with critical habitat” scenario describes the incremental impacts specifically due to designation of critical habitat for the loggerhead. In other words, these incremental conservation measures and associated economic impacts would not occur but for the designation. Conservation measures implemented under the baseline (without critical habitat) scenario are described qualitatively within the DEA, but economic impacts associated with these measures are not quantified. Economic impacts are only quantified for conservation measures implemented specifically due to the designation of critical habitat (i.e., incremental impacts). For a further description of the methodology of the analysis, see Chapter 2 “Framework of the Analysis” of the DEA.

The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for the Northwest Atlantic Ocean DPS of the loggerhead sea turtle over the next 10 years (2014 to 2023). This was determined to be an appropriate period for analysis because limited planning information is available for most economic activities in the area beyond a 10-year timeframe. It identifies potential incremental costs due to the proposed critical habitat designation; these are those costs attributable to critical habitat that are in addition to the baseline costs attributable to listing and other regulatory protections for the species.

The DEA quantifies economic impacts of loggerhead conservation efforts associated with the following categories of activity: (1) species and habitat management, (2) in-water and coastal construction, (3) sand placement, (4) recreation, (5) lighting

management, (6) disaster response, and (7) oil and gas activities. The DEA considers both economic efficiency and distributional effects that may result from efforts to protect the loggerhead and its habitat. Economic efficiency effects generally reflect “opportunity costs” associated with the commitment of resources required to accomplish species and habitat conservation. The DEA also addresses how potential economic impacts are likely to be distributed.

The DEA concludes that incremental impacts resulting from the critical habitat designation are limited to additional administrative costs of section 7 consultation. The primary source of uncertainty associated with the incremental effects analysis is that the actual rate and locations of future projects is unknown. The analysis does not identify any future projects beyond those covered by existing baseline projections. As a result, the analysis does not forecast incremental impacts due to conservation measures being implemented as a result of the designation of critical habitat.

The DEA estimates total potential incremental economic impacts in areas proposed as critical habitat over the next 10 years (2014 to 2023) to be approximately \$1,200,000 (\$150,000 annualized) in present-value terms applying a 7 percent discount rate. Administrative costs associated with section 7 consultations are distributed as follows: in-water and coastal construction is greatest (46 percent - \$530,000), followed by sand placement (18 percent - \$210,000), species and habitat management (17 percent - \$200,000), recreation (10 percent - \$120,000), disaster response (5 percent - \$53,000), lighting management (3 percent - \$32,000), and oil and gas activities (1 percent - \$6,600).



In areas being considered for exclusion, quantified impacts to in-water and coastal construction are greatest (54 percent - \$68,000), followed by species and habitat management (24 percent - \$30,000), recreation (16 percent - \$21,000), disaster response (4 percent - \$4,900), and sand placement (2 percent - \$2,500), with minor quantified impacts expected for lighting management (\$370) and oil and gas activities (\$140).

The incremental costs described above are further broken down by location of expected incremental costs within the proposed critical habitat units. The greatest incremental impacts are due to the cost of section 7 consultations forecast to occur for activities within LOGG-T-AL-01 (approximately \$86,000), comprising approximately seven percent of the overall incremental impacts. The second largest incremental impacts are predicted to occur within LOGG-T-FL-40 (approximately \$83,000), also comprising approximately seven percent of the overall incremental impacts. Overall, however, quantified impacts in 58 of the proposed critical habitat units are expected to be under \$10,000.

The critical habitat units with the greatest level of administrative costs for section 7 consultations by activity are as follows: species and habitat management (LOGG-T-AL-01), in-water and coastal construction (LOGG-T-FL-40), sand placement (LOGG-T-SC-01), recreation (LOGG-T-FL-07), lighting management (LOGG-T-FL-07), disaster response (equally distributed across all units), and oil and gas activities (LOGG-T-MS-01 and 02; LOGG-T-AL-01 and 02).

As stated earlier, we are soliciting data and comments from the public on the DEA, as well as on all aspects of the proposed rule and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

### **Required Determinations—Amended**

In our March 25, 2013, proposed rule (78 FR 18000), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA data to make these determinations. In this document, we affirm the information in our proposed rule concerning Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 12630 (Takings), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951). However, based

on the DEA data, we are amending our required determination concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

*Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of our final rulemaking.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental

jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term “significant economic impact” is meant to apply to a typical small business firm’s business operations.

Of the seven categories of key activities (species and habitat management, in-water and coastal construction, sand placement, recreation, lighting management, disaster response, and oil and gas activities) identified in the DEA as those that may have an adverse impact on the physical and biological features of loggerhead terrestrial critical habitat, small entities are not anticipated to incur incremental costs associated with disaster response or oil and gas activities. This is due to the fact that the forecasted section 7 consultations concerning these activities are expected to involve only USFWS and Federal agencies (Federal Emergency Management Agency and Bureau of Ocean Energy Management). The DEA also describes impacts associated with species and habitat management, in-water and coastal development, sand placement, recreation, and

lighting management. While we expect that future section 7 consultations concerning these activities will primarily involve USFWS and Federal agencies, the potential exists for third parties to be involved in consultations. Specifically, for species and habitat management, sand placement, recreation, and lighting management, counties may be involved in future section 7 consultations. For in-water and coastal development, businesses may be involved in future section 7 consultations. Therefore, the DEA presents information on small governmental jurisdictions (counties) and small businesses that may be involved in the forecast consultations for these activities.

To determine if the proposed designation of terrestrial critical habitat for the loggerhead would affect a substantial number of small entities, we considered the number of small entities affected within the categories of activities identified above. In order to determine whether it is appropriate for our agency to certify that this proposed rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the loggerhead is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize this proposed critical habitat designation, consultations to avoid the destruction or

adverse modification of critical habitat would be incorporated into the existing consultation process.

Of the county governments potentially involved in future section 7 consultation on species and habitat management, lighting management, sand placement, and recreation, only one county is considered a small government jurisdiction as defined in Section 601(5) of the RFA. With a population of 15,844, Gulf County, Florida, is considered a small governmental jurisdiction. The total potential annualized incremental economic impact to Gulf County is \$650 (seven percent discount rate), which represents less than 0.01 percent of the county's reported revenues in 2011. This impact is the total third party cost of forecasted section 7 consultations on species and habitat management (associated with the potential reinitiation of formal consultation on the Gulf County draft HCP should it be approved prior to final designation of terrestrial critical habitat), sand placement, recreation, and lighting management, which are expected to occur in the proposed critical habitat units located in Gulf County, Florida, as described in Chapters 3, 5, and 6 of the DEA. We exclude costs associated with programmatic consultations, as these are expected to involve only USFWS and a Federal agency. Note that proposed critical habitat unit LOGG-T-FL-41 contains areas in both Bay and Gulf Counties. For purposes of this analysis, the DEA conservatively assumed that the full third party costs associated with consultations in this unit are incurred by Gulf County, which may result in an overestimate of costs.

In the DEA, we also evaluated the potential economic effects on small entities resulting from participation in section 7 consultation. Although we expect that Federal agencies are the only entities that will be directly regulated as a result of designation of terrestrial critical habitat for the loggerhead, we acknowledge that third party proponents of an action subject to Federal permitting or funding may be indirectly affected by critical habitat designation. The DEA, therefore, uses information from Dun and Bradstreet databases to determine the number of small businesses operating within potentially affected industry sectors in each county containing proposed critical habitat units and includes a brief evaluation of the potential number of third party small business entities likely to be affected if this critical habitat designation is finalized. Please refer to the DEA of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

The Service's current understanding of recent case law is that Federal agencies are required to evaluate the potential impacts of rulemaking only on those entities directly regulated by the rulemaking; therefore, they are not required to evaluate the potential impacts to those entities not directly regulated. The designation of critical habitat for an endangered or threatened species has a regulatory effect only where a Federal action agency is involved in a particular action that may affect the designated critical habitat. Under these circumstances, only the Federal action agency is directly regulated by the designation, and, therefore, consistent with the Service's current interpretation of RFA and recent case law, the Service may limit its evaluation of the potential impacts to those identified for Federal action agencies. Under this interpretation, there is no requirement

under the RFA to evaluate potential impacts to entities not directly regulated, such as small businesses. However, Executive Orders 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consequently, it is the current practice of the Service to assess to the extent practicable these potential impacts, if sufficient data are available, whether or not this analysis is believed by the Service to be strictly required by the RFA. In other words, while the effects analysis required under the RFA is limited to entities directly regulated by the rulemaking, the effects analysis under the Act, consistent with the E.O. regulatory analysis requirements, can take into consideration impacts to both directly and indirectly impacted entities, where practicable and reasonable.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration. Within areas proposed for critical habitat designation, the quantified annualized impacts to small entities are estimated to be \$15,000, or approximately 12 percent of total quantified incremental impacts anticipated as a result of designation of this proposed critical habitat. In areas being considered for exclusion, the quantified annualized impacts to small entities are estimated to be \$1,800, or approximately 11 percent of total quantified incremental impacts anticipated as a result of designation of this proposed critical habitat. However, based on comments we receive, we may revise this estimate as part of our final rulemaking. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat designation would not have a



significant economic impact on a substantial number of small business entities.

Therefore, an initial regulatory flexibility analysis is not required.

*E.O. 12630 (Takings)*

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating terrestrial critical habitat for the loggerhead in a takings implications assessment. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding, assistance, or require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. The economic analysis found that no significant economic impacts are likely to result from the designation of critical habitat for loggerhead. Because the Act's critical habitat protection requirements apply only to Federal agency actions, few conflicts between critical habitat and private property rights should result from this designation. Based on information contained in the economic analysis assessment and described within this document, it is not likely that economic impacts to a property owner would be of a sufficient magnitude to support a takings action. Therefore, the takings implications assessment concludes that this designation of critical habitat for loggerhead does not pose significant takings implications for lands within or affected by the designation.

**Authors**

The primary authors of this notice are the staff members of the North Florida Ecological Services Office, Southeast Region, U.S. Fish and Wildlife Service.

**Authority**

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Date: June 10, 2013

/s/ Rachel Jacobson

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks

Billing Code 3510-22-P